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RENE PEINADO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

12 RENE PEINADO, ) NO. C11-01799 EMC (JSC)  
13 Plaintiff, )  
14 v. )  
15 CITY AND COUNTY OF SAN )  
FRANCISCO, ELIAS )  
16 GEORGOPoulos, AND DOES 1-50, )  
17 Defendants. )  
18 \_\_\_\_\_ )  
19 AND RELATED CROSS-ACTION )  
\_\_\_\_\_ )

**PLAINTIFF'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

DATE: NOVEMBER 20, 2014  
TIME: 1:30 P.M.  
CTRM: 5, 17TH FLOOR

HON. EDWARD M. CHEN

1

**Introduction**

2 This case is about a rogue Parking Control Officer with a bad temper and a propensity to  
 3 twist the facts. Despite multiple lawsuits and judgments against him and his employer, the City and  
 4 County of San Francisco (“CCSF”), Defendant Elias Georgopoulos remains employed and blatantly  
 5 unrepentant. Plaintiff Rene Peinado opposes Defendants’ Motion for Summary Judgment on the  
 6 grounds that the record supports his malicious prosecution claim against Defendant Elias  
 7 Georgopolous. There is specific and admissible evidence supporting a finding of genuine issue of  
 8 disputed material facts in regard to the malicious prosecution claim.<sup>1</sup> There is no basis to apply the  
 9 doctrine of collateral estoppel to a preliminary hearing, and no basis to apply the doctrine of  
 10 qualified immunity to Defendant Georgopoulos’ conduct.

11 There is also no question that Defendant Georgopoulos was acting under color of law at all  
 12 times that he sought to deprive Mr. Peinado of his Fourth Amendment right to be free from  
 13 unreasonable and/or unlawful seizures. In this case, not only was Mr. Peinado dragged from his  
 14 office and incarcerated, his vehicle was also seized, impounded and ultimately sold while he was  
 15 still fighting to clear his name. Defendant Georgopoulos’ conduct in this matter is absolutely  
 16 despicable and warrants a trial to award damages as well as punitive damages.

17

**Summary of Facts**

18 On March 23, 2005, following a brief encounter with Plaintiff Rene Peinado in front of 650  
 19 California Street, near Montgomery in San Francisco, Defendant Georgopoulos (“EG”) falsely  
 20 accused Mr. Peinado of hitting him with his Range Rover. (Declaration of Rene Peinado In  
 21 Opposition to Motion for Summary Judgment (hereinafter “RP DEN”) @ 1:23-2:12.) According to  
 22 Defendant EG, as he was attempting to give Mr. Peinado a parking ticket, Mr. Peinado looked  
 23 “dead at him” in the eye with “a cold stare” and then “came right for [him].”<sup>2</sup> (RP DEN, Ex. A @

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25 <sup>1</sup> Mr. Peinado does not oppose dismissal of the Monell claim under the Second Cause of  
 26 Action.

27 <sup>2</sup> Defendant EG has testified in detail about the events of March 23, 2005 at a hearing before  
 28 the DMV on October 31, 2005, and at the San Francisco Superior Court Preliminary Hearing on  
 August 17, 2006. (A true and correct copy of excerpts from the transcript of the DMV hearing is

1 26:4-11.) According to Defendant EG, Mr. Peinado ran him down “as if [he] were a cone” and he  
 2 landed on the hood of the car “like a hood ornament.” (RP DEN, Ex. A @ 42:10-21; Ex. B @ 7:26-  
 3 28; 22:10-18.) Miraculously, Defendant EG claims that he was able to push himself off of the hood,  
 4 land on his feet, and then follow Mr. Peinado on a wild ride through the streets of San Francisco.  
 5 (RP DEN, Ex. A @ 19:13-21:2; Ex. B @ 8:23-24; 12:20-28.)

6 According to Defendant EG, he followed Mr. Peinado down California Street, saw him  
 7 “blow” every red light he could through the streets of downtown until he “lost him” somewhere  
 8 near Union Square. (RP DEN, Ex. A @ 19:13-21:2.) Defendant EG claims that he saw Mr.  
 9 Peinado run at least four (4) red lights in his effort to get away from him.<sup>3</sup> (RP DEN, Ex. B @  
 10 \_\_\_\_\_.) Mr. Peinado had no idea he was being followed. (RP DEN @ 2:10-11.) Defendant EG  
 11 pulled behind Mr. Peinado and yelled, “Stop! You hit me!” (RP DEN @ 2:11.) Mr. Peinado denied  
 12 the accusation and drove away when the light turned green. (RP DEN @ 2:11-12.)

13 Three days later, four police officers showed up outside Mr. Peinado’s office. (RP DEN  
 14 @2:13.) Grabbing him and slamming him on the hood of their cruiser, they arrested Mr. Peinado.  
 15 (RP DEN @ 2:13-14.) They entered the office building’s parking garage and impounded Mr.  
 16 Peinado’s business vehicle, a 1997 Land Rover. (RP DEN @ 2:14-15.) The vehicle was  
 17 eventually lost because of the storage fees imposed by the tow company (\$4,477). (RP DEN @  
 18 2:15-16.)

19 Defendant EG’s version of the incident is denied by Mr. Peinado and controverted by the  
 20 contemporaneous medical records. (RP DEN @ 1:23-2:12.) Immediately following the incident,  
 21 Defendant EG was taken by ambulance to San Francisco General Hospital. (RP DEN, Ex. B @  
 22 \_\_\_\_\_.) Following an extensive examination and evaluation, including x-rays, the medical personnel

23  
 24 attached as Exhibit A to the Declaration of Rene Peinado in Opposition to the Motion for Summary  
 25 Judgment; a true and correct copy of the excerpts from the preliminary hearing transcript is attached  
 26 as Exhibit B.)

27 <sup>3</sup> Notably, the incident started at approximately 11:45 a.m. According to Defendant  
 28 EG, Mr. Peinado drove recklessly through the heart of the financial district on streets crowded  
 with pedestrians and cars “blowing every light he could.” Defendant EG testified at the  
 preliminary hearing that Mr. Peinado ran the red light at California & Montgomery during the  
 noon hour, successfully traversing the three-way pedestrian walk sign.

1 found no signs of injury and released Defendant EG to return to work. (RP DEN, Ex. B @ \_\_\_\_;  
 2 Declaration of Pamela Y. Price In Opposition to Defendants' Motion for Summary Judgment, Ex.  
 3 A.) There was no fracture of his left shoulder nor any signs of injury to the left shoulder. RP DEN,  
 4 Ex. B @ \_\_\_\_.) There were no abrasions found nor any obvious signs of trauma to his body. (RP  
 5 DEN, Ex. B @ \_\_\_\_.) There was no dislocation of any kind. (RP DEN, Ex. B @ \_\_\_\_.) There was  
 6 no hematoma on any part of his body whatsoever. (RP DEN, Ex. B @ \_\_\_\_.) There was no sign of  
 7 any sort of scape or abrasions or trauma to his ribs. (RP DEN, Ex. B @ \_\_\_\_.) The cardiovascular  
 8 signs were within normal limits. (RP DEN, Ex. B @ \_\_\_\_.) There was no trauma or abrasions to  
 9 his head or skull, nor any intracranial hemorrhage. (RP DEN, Ex. B @ \_\_\_\_.) As the Court noted  
 10 at the preliminary hearing, "the records themselves are completely uncorroborative of any kind of  
 11 injury whatsoever."<sup>4</sup> (RP DEN, Ex. B @ \_\_\_\_.)

12 Notwithstanding the lack of any discernable injury, Defendant EG filed a workers'  
 13 compensation claim and took off work for two to three months. (RP DEN, Ex. \_\_\_\_ @ \_\_\_\_.)  
 14 Based on Defendant EG's claim that Mr. Peinado intentionally hit him with a car, Mr. Peinado was  
 15 arrested and charged with a felony assault with a deadly weapon and a misdemeanor hit and run.  
 16 (RP DEN @ 2:20-21.) At the preliminary hearing held on August 6, 2006, following the  
 17 presentation of the evidence, the Court exercised her discretion to reduce the felony to a  
 18 misdemeanor. (RP DEN, Ex. B @ 65-70.)

19 The prosecution of these charges lasted four (4) years. (RP DEN @ 2:21-22.) The case was  
 20 finally dismissed on the Court's own motion on April 14, 2009 in the interests of justice under  
 21 Penal Code Section 1385. (Declaration of Michael K. Hinckley (hereinafter "Hinckley DEN") @  
 22 2:14-20.) Throughout the prosecution of the case, Mr. Peinado vociferously maintained his  
 23 innocence and never wavered in his desire to fight the case if necessary to prove his innocence. (RP  
 24 DEN @ 2:23-24; Declaration of Lidia Stiglich (hereinafter "Stiglich DEN") @ 2:6-7.)

25 Mr. Peinado was represented by seasoned attorney Lidia Stiglich. (Stiglich DEN @ 2:15-  
 26 16.) She expressed to Judge Kevin McCarthy and the District Attorney that Mr. Peinado was

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27  
 28 <sup>4</sup> Comments by the Hon. Judge Susan Breall contained in the Reporter's Transcript  
 of Proceedings, Price DEN, Ex. B @ 67:1-23.

1 adamant that he was innocent of the allegations against him. (Stiglich DEN @ 2:17-20.) They also  
 2 discussed Defendant EG's serious credibility problems. (Stiglich DEN @ 3:1-5.) Attorney Stiglich  
 3 shared with the Court Defendant EG's reputation as dishonest and an oddball loose cannon.  
 4 (Stiglich DEN @ 3:5-7.) Attorney Stiglich was not able to reach an agreement with the District  
 5 Attorney to dismiss the case. (Stiglich DEN @ 3:9-10.) She focused her attention in getting the  
 6 Court to dismiss the case pursuant to Penal Code Section 1385.

7 Defendant EG has a well-documented pattern of engaging in conduct that causes "fear and  
 8 trepidation" both in and out of the workplace. On July 14, 2000, the Hon. Judge Linda Colfax, then  
 9 a Deputy Public Defender employed by CCSF, had a close encounter with Defendant EG where he  
 10 engaged in aggressive and intimidating behavior which frightened her. (RP DEN, Ex. B @ \_\_\_\_.)  
 11 She testified at Mr. Peinado's preliminary hearing that Defendant EG followed her through the  
 12 streets of San Francisco in an enraged state, screaming obscenities at her. (RP DEN, Ex. B @  
 13 \_\_\_\_.) In his response dated August 25, 2000, Defendant EG accused Judge Colfax of cutting him  
 14 off, tailgating and yelling profanities at him. (PYP DEN, Ex. C.)

15 On November 9, 2001, then DPT Assistant Director Theresa Zucconi reported that  
 16 Defendant EG was disrespectful, argumentative and confrontational toward her at work. (PYP  
 17 DEN, Ex. D.) He received a written reprimand for his conduct. (PYP DEN, Ex. D.) In response,  
 18 Defendant EG refused to take anger management classes and upon being advised of the decision to  
 19 issue a written reprimand, slammed his chair in anger and left the meeting in an angry and hostile  
 20 manner. (PYP DEN, Ex. D.)

21 On April 20, 2005, Defendant EG's then Supervisor, Kathy Sullivan, requested that  
 22 Defendant EG be disciplined for being "disruptive, insubordinate" and refusing to follow her  
 23 instructions. (PYP DEN, Ex. E.) Her report was based on his conduct at a staff meeting on April  
 24 20, 2005. (PYP DEN, Ex. E.) She recommended disciplinary action and anger management  
 25 training based on Defendant EG's "angry outbursts and disruptive behavior." (PYP DEN, Ex. E.)

26 **Standard of Review**

27 Federal Rule of Civil Procedure 56(c) states that summary judgment is proper only when  
 28 "there is no genuine issue as to any material fact." In judging evidence at the summary judgment

1 stage, the Court does not make credibility determinations or weigh conflicting evidence, and draws  
 2 all inferences in the light most favorable to the nonmoving party. (*T.W. Elec. Service, Inc. v.*  
 3 *Pacific Elec. Contractors Ass'n*. 809 F.2d 626, 630-631 (9th Cir. 1987, citing *Matsushita Elec.*  
 4 *Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Ting v. United States*, 927 F.2d 1504,  
 5 1509 (9th Cir. 1991).)

6 The district Court is required to review the record to determine whether disputed issues of  
 7 material fact are present. (*Fair Housing Council of Riverside County, Inc. v. Riverside Two*, 249  
 8 F.3d 1132, 1136 (9<sup>th</sup> Cir. 2001), citing *United States v. Fred A. Arnold, Inc.*, 573 F.2d 605, 606 (9<sup>th</sup>  
 9 Cir. 1978) and *Chevron USA, Inc. v. Cayetano*, 224 F.3d 1030, 1037 (9<sup>th</sup> Cir. 2000).)

10 “In ruling on a motion for summary judgment, the court is to determine whether a genuine  
 11 issue of material fact exists, viewing all evidence and factual inferences ‘in light most favorable to  
 12 the party opposing the motion.’” (*Reed v. Lockheed Aircraft Corporation*, 613 F.2d 757, 759 (9th  
 13 Cir. 1980) (quoting *Ramirez v. National Distillers and Chemical Corp.*, 586 F.2d 1315, 1318 (9th  
 14 Cir. 1978).) The Ninth Circuit will affirm only if the record, read in the light most favorable to the  
 15 nonmoving party, establishes that there is no genuine issue of material fact and the moving party is  
 16 entitled to judgment as a matter of law. (*Porter v. CDC*, 383 F.3d 1018, 1024 (9th Cir. 2004); *Lew*  
 17 *v. Kona Hospital*, 754 F.2d 1420, 1423 (9th Cir. 1985).)

18 **I. Defendant EG Is Not Entitled to Invoke the Doctrine of**  
**Collateral Estoppel**

19 In *Kourtis v. Cameron*, 419 F.3d 989, 997 (9th Cir. 2000), the Ninth Circuit noted that there  
 20 are several factors that guide a determination of whether an issue litigated in a prior proceeding is  
 21 identical to the one raised in later proceedings. The Court pointed out that “relevant considerations  
 22 include whether there is a substantial overlap between the evidence in the two cases . . .” citing  
 23 *Resolution Trust Corp. v. Keating*, 186 F.3d 1110, 1116 (9<sup>th</sup> Cir. 1999).

24 The main issue in this case is whether the criminal prosecution was induced by fraud,  
 25 corruption, perjury, fabricated evidence, or other wrongful conduct by Defendant EG undertaken in  
 26 bad faith. (*Awabdy v. City of Adelanto*, 368 F.3d 1062, 1067 (9<sup>th</sup> Cir. 2004); *Usher v. City of Los*  
 27 *Angeles*, 828 F.2d 556, 562 (9<sup>th</sup> Cir. 1987) citing *Singleton v. Perry*, 45 Cal.2d 489, 494, 289 P.2d  
 28 794, 798 (1955).) Malicious prosecution actions are not limited to suits against prosecutors but

1 may be brought, as here, against other persons who have wrongfully caused the charges to be filed.  
 2 (*Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126-27 (9th Cir. 2002).)

3 In *Haupt v. Dillard*, 17 F.3d 285, 289 (9<sup>th</sup> Cir. 1994), the Ninth Circuit held that absent a  
 4 showing that evidence not available to the arresting officer was presented at the preliminary hearing,  
 5 a finding of sufficiency of the evidence to require the defendant to stand trial is a finding of  
 6 probable cause to arrest the defendant. (*Accord, Morley v. Walker*, 175 F.3d 756, 760-761 (9th  
 7 Cir.1999).) Collateral estoppel does not apply, however, when the decision to hold a defendant to  
 8 answer was made on the basis of fabricated evidence presented at the preliminary hearing or as the  
 9 result of other wrongful conduct by state or local officials. (*See Awabdy v. City of Adelanto*, 368  
 10 F.3d 1062, 1067 (9<sup>th</sup> Cir. 2004); *Haupt*, 17 F.3d at 290, n. 5; *Morley v. Walker*, 175 F.3d at 760-61;  
 11 *McCutchen v. City of Montclair*, 73 Cal.App.4th 1138, 87 Cal.Rptr.2d 95, 101 (1999).)

12 Mr. Peinado's case falls squarely within the exception to the rule. The signature issue in the  
 13 case is whether Defendant EG's tale of a calculated assault with a deadly weapon and a flight  
 14 through the crowded streets of San Francisco is a fabricated fantasy or something that actually  
 15 happened.

16 **II. The Disputed Circumstances of the Dismissal of the  
 Criminal Case Create A Triable Issue of Fact**

17 Defendants' main defense is that the criminal case was dismissed as a result of a negotiated  
 18 disposition which included an agreement for Mr. Peinado to attend and complete the Pretrial  
 19 Diversion Program. The flaw in the Defendants' contention is that there are factual disputes about  
 20 the circumstances of the dismissal which must be determined at trial. Specifically,

21

- 22     ● there was no agreement with the District Attorney to dismiss the charges - the  
       charges were dismissed by Judge Meeks on Judge McCarthy's motion over  
       the objections of the District Attorney
- 23     ● the dismissal was entered on the Court's own motion after the Court was  
       presented with evidence of mendacity by Defendant EG and a history of  
       aggressive and erratic behavior
- 24     ● According to the 2007 Eligibility Criteria, Mr. Peinado was not  
       eligible for the Pretrial Diversion Program and diversion was denied  
       on April 22, 2008.
- 25     ● Mr. Peinado did not participate in a normal diversion program - the  
       Court allowed him to submit 26 hours of volunteer service with the  
       Golden Gate National Parks Association.

1                   ● The attorneys for Mr. Peinado steadfastly insisted upon his innocence  
 2 and refused to negotiate or accept any compromise that undermined  
 3 Mr. Peinado's contention of factual innocence of the charges.

4                   In *Awabdy v. City of Adelanto*, 368 F.3d *supra* at 1068, the Court held that "a dismissal in  
 5 the interests of justice satisfies the requirement if it reflects the opinion of the prosecuting party or  
 6 the court that the action lacked merit or would result in a decision in favor of the defendant. Here,  
 7 the attorneys were steadfast in their position that the case could only be dismissed pursuant to Penal  
 8 Code Section 1385 ("in the interests of justice"). In *Jaffe v. Stone*, 18 Cal.2d 146 (1941), the  
 9 California Supreme Court held that if a dismissal is of such a nature as to indicate the innocence of  
 the accused, it is a favorable termination sufficient to satisfy the requirement.

10                  It is also well settled that if the circumstances of the termination of the criminal case are  
 11 conflicted, the determination of the reasons underlying the dismissal is a question of fact.

12 (*Sycamore Ridge Apartments, LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1399, 69 Cal.  
 13 Rptr.3d 561; *accord, Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 217, 105 Cal.Rptr.3d 683;  
 14 *Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 128-129, 151 Cal.Rptr.3d  
 15 117; *Thao v. Donovan*, 2012 WL 4052032 \*9-11 (E.D.Cal. 2012); *Dugan v. Nance*, 2013 WL  
 16 6633072 \*6-7 (C.D.Cal. 2013); *Gressett v. Contra Costa County*, 2013 WL 6671795 \*2-3  
 17 (N.D.Cal. 2013).)

18                  In *Gressett*, 2013 WL 6671795 \*3, citing *Awabdy*, 368 F.3d at 1068, this Court also  
 19 acknowledged that a dismissal in the interests of justice satisfied the favorable termination  
 20 requirement if it reflects the opinion of the prosecuting party or the court that the action lacked  
 21 merit or would result in a decision in favor of the defendant. Here, there is also evidence that the  
 22 trial court doubted the legitimacy of the charge or as to Mr. Peinado's guilt. The criminal  
 23 prosecution was dismissed on the Court's own motion over the objections of the prosecutor!  
 24 (Hinckley DEN @ 2:14-26; *see also* Stiglich DEN @ 2:13-3:13.)

25                  **III. Defendant Georgopoulos Is Not Entitled to Qualified Immunity**

26                  Qualified immunity protects government officials performing discretionary functions where  
 27 their conduct is objectively reasonable. (*See Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct.  
 28 2727, 73 L.Ed.2d 396 (1982); *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271

1 (1986) (“As the qualified immunity defense has evolved, it provides ample protection to all but the  
 2 plainly incompetent or those who knowingly violate the law”); *see also Herb Hallman Chevrolet,*  
 3 *Inc. v. Nash-Holmes*, 169 F.3d 636 (9th Cir. 1999) (affirming a grant of summary judgment to  
 4 Washoe County prosecutors on the basis of absolute and qualified immunity.) We have held that a  
 5 plaintiff must make not only a substantial showing of deliberate falsehood or reckless disregard for  
 6 the truth regarding an officer’s statements in an affidavit for a warrant, but establish that “without  
 7 the dishonestly included or omitted information,” the warrant would not have issued. (*Hervey v.*  
 8 *Estes*, 65 F.3d 784, 788–89 (9th Cir. 1995).)

9       In this case, the evidence plainly suggests that Defendant EG fabricated his entire tale for his  
 10 own purposes. The law cannot and does not countenance deliberate falsification of events and  
 11 information by a public official acting under color of law.

12       **IV. Defendant Georgopolous Was Acting Under Color of Law**

13       At all times during the encounter with Mr. Peinado, Defendant EG was acting under color of  
 14 law. Ironically, the entire chain of events started with a citation for failing to curb the wheels of the  
 15 vehicle during the brief period of time that Mr. Peinado was away from the car. (RP DEN, Ex. B @  
 16 4:21-26.) Defendant EG was on duty and acting in his official capacity throughout the incident,  
 17 including when he was calling for police back-up to arrest Mr. Peinado.

18       **V. Mr. Peinado Did Not Authorize A Negotiated Disposition**

19       It is undisputed that Mr. Peinado did not authorize a negotiation disposition of the  
 20 underlying criminal case such that he can be charged with a knowing waiver of his right to pursue  
 21 this lawsuit. In the event the Court is inclined to find that the dismissal of the criminal prosecution  
 22 did not constitute “a favorable termination,” Mr. Peinado can not be penalized since he did not ever  
 23 authorize any type of negotiated disposition or waive his rights against Defendant EG. (*See Blanton*  
 24 *v. Womancare, Inc.*, 38 Cal.3d 396 (1985).)

25       **CONCLUSION**

26       For the reasons set forth in the Motion, Defendants’ Motion for Summary Judgment should  
 27 be denied except as to the Second Cause of Action.

28       Dated: October 30, 2014

/s/ Pamela Y. Price  
 PAMELA Y. PRICE, Attorneys for Plaintiff